IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8068 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RADHABEN HIRALAL MANDOVRA

Versus

CHIEF CONTROLLING REVENUE AUTHORITY

Appearance:

MR DC DAVE for Petitioner

MR HM BHAGAT for Respondent No. 1, 2

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 12/06/2000

ORAL JUDGEMENT

Rule. Mr HM Bhagat, learned counsel for the respondents waives service of Rule.

2. In this petition under Article 226 of the Constitution, the petitioner has challenged the order dated 30.3.1998 of the Chief Controlling Revenue Authority, Gujarat State, Ahmedabad rejecting the

petitioner's appeal No. 915/97 under Section 32B of the Bombay Stamp Act, 1958 (hereinafter referred to as "the Act").

3. At the hearing of this petition, Mr Dhaval Dave, learned counsel for the petitioner has submitted that earlier the appeal was fixed for hearing before the Chief Controlling Revenue Authority (hereinafter referred to as "respondent No. 1") on 9.2.1998 and the petitioner's advocate Mr Prabodh S. Oza had remained present before respondent No. 1, but the hearing did not take place and the advocate was informed that in due course the date of hearing would be informed, but neither the petitioner nor the advocate was informed about the next date of hearing. Apart from the affidavit in support of the petition, the petitioner has also produced the affidavit dated 7.10.1999 of Mr Prabodh S. Oza to the aforesaid effect.

4. There is no affidavit in reply controverting the above averments, but Mr Bhagat appearing for the respondent authorities submits that the petitioner had not appeared even before the Deputy Collector though there is no dispute about the service of notice sent by the Deputy Collector on the petitioner.

5. In rejoinder, Mr Dhaval Dave submits that the petitioner did submit his reply to the Deputy Collector in response to the notice sent by the Deputy Collector, but the same was not considered by the Deputy Collector. According to Mr Bhagat, the same was received after the order was passed.

6. In view of the aforesaid facts and circumstances, it appears to the Court that interests of justice would be served if the respondent authorities are directed to give the petitioner another opportunity of being heard so that the original authority i.e. Deputy Collector has the advantage of considering the reply and the material sought to be produced by the petitioner. In order to remove all ambiguity and in order to ensure that no further misunderstanding takes place, it is directed that the petitioner shall submit his reply/representation in response to the original notice issued by the Deputy Collector alongwith all the material that he seeks to rely upon on or before 30.6.2000 and thereafter respondent No. 2 shall hear the petitioner or his learned advocate on such date as may be convenient to respondent No. 2. Mr Dhaval Dave, learned counsel for the petitioner assures that the petitioner or his learned advocate appearing before the authorities shall not ask for any adjournment.

7. In view of the above directions which this Court has given without going into the merits of the matter, the impugned order dated 10.12.1996 (Annexure "C") of the Deputy Collector and the order dated 30.3.1998 (Annexure "E") of the Chief Controlling Revenue Authority as well as the consequential notice dated 13.9.1999 (Annexure "D") are set aside. After giving the petitioner a fresh opportunity of hearing, respondent No. 2 shall be at liberty to arrive at a decision in accordance with law without being influenced by the fact that the impugned orders are set aside for the reasons aforesaid.

8. Since the order of the Deputy Collector is required to be set aside on account of the delay on the part of the petitioner in submitting the petitioner's reply to the notice, the petitioner shall pay the costs of this petition which are quantified at Rs.1,000/- (Rupees One thousand only). The costs shall be paid to respondent No. 2 on or before 30.6.2000.

Rule is made absolute to the aforesaid extent.

June 12, 2000 (M.S. Shah, J.)
sundar/-